

BEFORE THE INSURANCE COMMISSIONER  
FOR THE STATE OF ARKANSAS

IN THE MATTER OF  
THE REASONABLE AVAILABILITY  
OF LONG-TERM CARE LIABILITY  
INSURANCE IN THE  
STATE OF ARKANSAS

AID ORDER NO. 2001-

ORDER

On this day the matter of the reasonable availability of long-term care liability insurance in the State of Arkansas came before Mike Pickens, Arkansas Insurance Commissioner ("Commissioner"). The Arkansas Insurance Department ("Department") was represented by Sara Farris, Associate Counsel. From the evidence before the Commissioner, it is found:

1. Act 1825 of 2001 requires the commissioner to hold a hearing to determine whether or not long-term care liability insurance is reasonably available in this state.

2. If the commissioner determines that long-term care liability insurance is not reasonably available in this state, Act 1825 of 2001 requires the commissioner to prepare a voluntary plan which will provide such coverage.

3. Out of eighty (80) admitted insurers holding certificates of authority that would authorize them to write long-term care liability coverage, only five (5) have products filed with the Department.

4. Two (2) of these five (5) companies have products filed but have no business due to extremely stringent underwriting restrictions. One (1) has policies but is not renewing them. One (1) has policies and is selectively renewing them.

5. Some surplus lines carriers are writing long-term care liability insurance. This insurance is very expensive and is cost prohibitive for many nursing homes. Although nursing homes are reimbursed these costs eventually, reimbursement does not occur at the time they are incurred and may be of little benefit to the nursing home facility.

6. Surplus lines coverage does not provide the extent of coverage needed by nursing homes; for instance, many exclude punitive damages and damages for physical and sexual abuse. There is no guaranty fund protection for products written through surplus lines carriers.

7. Judgments since April 2001 against Arkansas nursing homes total at least \$ 93 million, not including settlements. Most carriers cite lack of effective civil justice reform, as was accomplished in Florida, in Arkansas as a major reason for their unwillingness to write here.

8. A recent survey of the insurance market shows the following factors have also contributed to the market decline:

- a. Increasing loss severity
- b. Difficulty predicting future loss trends
- c. Difficulty in pricing, due to escalating court judgments and settlements.
- d. Better risk management is needed
- e. Financial condition of long-term industry is perceived to be poor
- f. Low/slow Medicare reimbursement rates
- g. Lack of reinsurance

9. The voluntary plan under Act 1825 must be capitalized in an amount sufficient to fund the professional expenses necessary to establish the plan. No state funding would be available.

10. Rates are anticipated to be high.

11. Raising the necessary funding, capital and surplus will most likely require maximum participation of long-term care facilities in the state.

12. The voluntary plan has limits of \$1Million/ 3 Million, which are low in light of recent judgments and settlements. Participants would have to pay substantial deductibles.

13. Reinsurance is not readily available, and availability of reinsurance for the voluntary plan is problematic, particularly in light of the unprecedented losses following terrorist attacks on the World Trade Center, Pentagon and airlines industry. The plan's low limits may make reinsurance more difficult to procure.

THEREFORE, based upon the above evidence, the commissioner finds that:

A. Long-term care liability insurance is not reasonably available in the State of Arkansas.

B. The legislature's nursing home liability plan may prove to be inadequate to meet the needs of the nursing home owners, particularly if the plan does not have the maximum possible participation.

C. The overwhelming preponderance of the evidence reveals that some degree of civil justice reform is necessary if Arkansas's voluntary nursing home liability insurance market is to survive and serve our consumers. Therefore, this Department respectfully recommends that the House and Senate Interim Committee on Insurance

and Commerce conduct an interim study to determine what civil justice reforms are necessary to ensure the constitutional right of each citizen to access the courts to redress legitimate grievances and injuries, while at the same time protecting and ensuring the constitutional right to a fair trial for all parties.

D. There is serious concern among affected consumers and insurance professionals that, if the legislature fails to enact fair, reasonable, equitable and meaningful civil justice reform in due course, because of the relatively small size of the Arkansas market and other relevant factors, these affordability and availability problems in the nursing home insurance market will expand to other lines of insurance, most notably medical malpractice insurance.

E. Pursuant to Act 1825 of 2001, the commissioner respectfully requests that the governing board be appointed at the earliest possible time in accordance with the applicable law and that the board form the plan as required.

IT IS SO ORDERED THIS 1<sup>st</sup> day of October, 2001.



MIKE PICKENS

INSURANCE COMMISSIONER

STATE OF ARKANSAS